

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**DEC 12 2005**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RIGOBERTO CHAVEZ-SANDOVAL,

Defendant - Appellant.

No. 03-10609

D.C. No. CR-02-00294-MCE

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Eastern District of California  
Morrison C. England, District Judge, Presiding

Submitted December 5, 2005<sup>\*\*</sup>

Before: GOODWIN, W. FLETCHER and FISHER, Circuit Judges.

Rigoberto Chavez-Sandoval appeals from his conviction and 84-month sentence, imposed after a bench trial, for being a deported alien found in the United States, in violation of 8 U.S.C. § 1326.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Pursuant to *Anders v. California*, 386 U.S. 738, 87 (1967), counsel for Chavez-Sandoval has filed a brief stating there are no grounds for relief, and a motion to withdraw as counsel of record. Chavez-Sandoval has filed a pro se supplemental brief.

We have conducted an independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 83 (1988). We affirm the conviction. Because Chavez-Sandoval was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005).

Counsel's motion to withdraw as counsel on appeal is denied.

The conviction is **AFFIRMED**, and the sentence is **REMANDED**.